

JOHN BLACKMORE
Claimant

NATIONAL BEEF PACKING COMPANY
Respondent

WAUSAU UNDERWRITERS INSURANCE CO.
Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

This claim for a February 20, 1994, work-related accident was consolidated for litigation purposes with a claim for an April 18, 1997, work-related accident which was assigned Docket No. 225,283. The Administrative Law Judge, however, entered two

separate Decisions. Accordingly, the claim for the April 18, 1997, accident has been reviewed by the Appeals Board in a separate Order under Docket No. 225,283.

At the time of the February 20, 1994, accident, claimant had been employed with the respondent since February 2, 1976. Claimant injured his low back while he was performing his regular maintenance work duties. After the accident, respondent provided claimant with medical treatment, claimant was off work for only a couple of days, and then he returned to his regular maintenance work activities. The only issue is whether claimant sustained a permanent functional impairment as a result of his work-related accident and if so, the appropriate permanent functional impairment rating.

The Administrative Law Judge awarded claimant a three percent permanent partial general disability. The award was based on the three percent permanent functional impairment rating opinion of orthopedic surgeon C. Reiff Brown, M.D., who was appointed by the Administrative Law Judge to perform an independent medical examination of claimant.

On appeal, claimant contends the Administrative Law Judge should have awarded a six percent permanent partial general disability instead of three percent. Claimant argues Dr. Brown, based on a hypothetical question, testified on cross examination that as the result of a 1992 low-back injury claimant had a five percent permanent functional impairment instead of the eight percent the doctor had opined on direct examination. Therefore, claimant argues the five percent should have been utilized to reduce claimant's overall eleven percent functional impairment rating after the February 20, 1994, accident instead of eight percent. This would result in a six percent functional impairment for the February 20, 1994, accident instead of the three percent found by the Administrative Law Judge.

In contrast, respondent argues the more credible functional impairment rating contained in the record is that of Blake C. Veenis, M.D., who treated claimant after the February 20, 1994, accident. Dr. Veenis opined that claimant's February 20, 1994, accident had not resulted in any increase in claimant's functional impairment from what claimant had previously sustained in the 1992 low-back injury. Accordingly, respondent argues, since there was no increase in claimant's permanent functional impairment, claimant is not entitled to a permanent partial general disability award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board makes the following findings and conclusions:

For the reasons stated in the Administrative Law Judge's Decision, the Appeals Board concludes the three percent permanent partial general disability award should be affirmed. The Appeals Board finds the Administrative Law Judge's findings and

conclusions as set forth in the Decision are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's October 14, 1999, Decision for the February 20, 1994, work-related accident is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Kerry McQueen, Liberal, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director